

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

EDNA VANBAULEN and GUY E.	§	
VANBAULEN	§	Civil Action No. 4:18-CV-155
	§	(Judge Mazzant/Judge Nowak)
v.	§	
	§	
WELLS FARGO U.S. HOLDINGS, INC.	§	

MEMORANDUM ADOPTING IN PART AND REJECTING IN PART REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On January 10, 2019, the report of the Magistrate Judge (Dkt. #33) was entered containing proposed findings of fact and recommendations that Defendant's Motion for Judgment on Pleadings (Dkt. #20) be granted in part and denied in part.

After review of Plaintiffs' pleadings, the Magistrate Judge recommended dismissal of Plaintiffs' claims for wrongful foreclosure and violations of the National Housing Act, 12 U.S.C. § 1715v ("NHA"), Unfunded Mandates Reform Act ("UMRA"), and Making Home Affordable Program ("HAMP"). The Magistrate Judge also found that Plaintiffs failed to state a Real Estate Settlement Procedures Act ("RESPA") or Texas Debt Collection Act ("TDCA") claim. The Court agrees with these findings and adopts these findings. However, the Court rejects the Magistrate Judge's recommendation that Plaintiffs be given an opportunity to amend their RESPA and TDCA claims. Plaintiffs have already been given an opportunity to file an amended complaint, and they failed to do so. After the pleadings closed, Defendant filed a Motion for Judgment on the Pleadings. Plaintiffs failed to file a response to Defendant's motion. The Magistrate Judge then gave Plaintiffs a second opportunity to file a response to the motion, but again Plaintiffs did not file a response.

The Magistrate Judge found that Plaintiffs could potentially raise a sufficient RESPA or TDCA claim. The Court rejects this finding. There is nothing in Plaintiffs' allegations that makes a RESPA or TDCA claim plausible. Moreover, Plaintiffs are not engaged in this litigation and never offered any rationale that would support allowing them another chance to file an amended complaint. Thus, any amendment would be futile.

It is, therefore, **ORDERED** that Defendant's Motion for Judgment on Pleadings (Dkt. #20) is **GRANTED** and Plaintiffs' case is **DISMISSED** with prejudice.

All relief not previously granted is hereby denied.

The Clerk is directed to close this civil action.

IT IS SO ORDERED.

SIGNED this 15th day of February, 2019.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE